

## IN THE UNITED STATES DISTRICT COURT

## FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 JOSE HERNANDEZ, et al.,

No. CV-08-2804 MMC

12 Plaintiffs,

**ORDER AFFORDING PLAINTIFFS  
OPPORTUNITY TO SUPPLEMENT  
APPLICATION FOR DEFAULT  
JUDGMENT; VACATING JUNE 5, 2009  
HEARING**

13 v.

14 SURINDER SROA, et al.,

15 Defendants

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17 Before the Court is plaintiffs Jose Hernandez and Virginia Hernandez's "Application  
18 for Default Judgment by Court," filed April 29, 2009. Defendants Kirt Menon and Argentum  
19 Real Estate and Mortgage, although served with the application, have not filed opposition.  
20 Having read and considered the papers filed in support of the application, the Court finds it  
21 appropriate to afford plaintiffs the opportunity to file a supplemental brief.22 In the application, plaintiffs seek, inter alia, an award of punitive damages in the  
23 amount of \$10,000, pursuant to 15 U.S.C. § 1691e(b), which provides that a "creditor,"  
24 under certain circumstances, "shall be liable to the aggrieved applicant for punitive  
25 damages in an amount not greater than \$10,000." See 15 U.S.C. § 1691e(b). Specifically,  
26 plaintiffs argue defendants should be held liable for an award of punitive damages under  
27 § 1691e(b) in light of an alleged violation of 12 C.F.R. §202.4(c), which provides that "[a]  
28 creditor shall take written applications for the dwelling-related types of credit covered by

1 § 202.13(a)." See 12 C.F.R. § 202.4(c). A "creditor," for the purposes of § 202.4(c), is  
2 defined as "a person who, in the ordinary course of business, regularly participates in a  
3 credit decision, including setting the terms of the credit," as well as "a creditor's assignee,  
4 transferee, or subrogee." See 12 C.F.R. §202.2(l).

5 In their application, plaintiffs fail to cite to any factual allegations in the complaint that  
6 would support a finding that defendants, or either of them, engaged in conduct that violated  
7 § 202.4(c), and, in particular, any factual allegations to support a finding that either  
8 defendant is a "creditor" within the meaning of § 202.4(c). See Geddes v. United Financial  
9 Group, 559 F.2d 557, 560 (9th Cir. 1977) (holding, upon entry of default, allegations in  
10 complaint, other than those relating to amount of damages, are "taken as true").

11 Accordingly, the Court hereby affords plaintiffs the opportunity to file, no later than  
12 June 12, 2009, a supplemental brief, not to exceed five pages in length exclusive of  
13 exhibits, to set forth their theory as to why defendants, or either of them, have violated  
14 §202.4(c).

15 As of June 12, 2009, the Court will take plaintiffs' application under submission.<sup>1</sup>

16 **IT IS SO ORDERED.**

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18 Dated: May 29, 2009  
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MAXINE M. CHESNEY  
United States District Judge

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1The June 5, 2009 hearing is hereby VACATED.